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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,279	05/15/2001	Theo Kirkland	TSR1 372.0 D2	3986

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EXAMINER

HINES, JANA A

ART UNIT PAPER NUMBER

1645

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/858,279	<b>Applicant(s)</b> KIRKLAND ET AL.	
	<b>Examiner</b> Ja-Na Hines	<b>Art Unit</b> 1645	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 3,6-8,12,21 and 22.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*L. F. Smith*  
**LYNETTE R. F. SMITH**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

Continuation of 2. NOTE: Applicants amendments do not overcome the 102 rejection of claims 3,6-8,12 and 21-22 because monoclonal antibodies 8C9 and 18G4 taught by Leturcq et al., are the same antibodies which the instant application teaches as being able to inhibit the binding of LPS by CD14-expressing CHO cells, and shown to block the release of TNF from myeloid cells. Contrary to applicants arguments, Leturcq teach that 8C9 only recognizes denatured LBP, and 18G4 recognizes native LBP and detect LBP when it is complexed with LPS, just as the claims require. Clearly Leturcq's antibodies do not inhibit binding since the antibodies can bind when LPS and LBP are complexed. Leturcq teach more than one antibody, therefore applicants argument that 8C9 antibody does not meet the claim is not persuasive because other antibodies that Leturcq teach meet the limitations of the instant claims. Therefore Leturcq et al., teach monoclonal antibodies with the same structure and functional abilities as those recited by the instant claims. The limitation that the monoclonal antibody including a binding specificity to LBP, to denatured LBP, and to a complex containing LBP and LPS of Mab 4D7, Mab 5C5, Mab 6B6, Mab 8C9, Mab 18G4 or Mab 24B7 does not change the structure of the claimed antibody, rather it describes binding specificities which the prior art antibodies are capable of meeting. Since the claim is silent as to actual structure of the antibody the prior art antibodies meet the limitations of the claims.

Continuation of 3. Applicant's reply has overcome the following rejection(s): The double patenting rejection is withdrawn in view of the filing of the terminal disclaimer.